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UNCLAS SECTION 01 OF 02 ATHENS 001197

SIPDIS

STATE FOR EB/TRA

E.O. 12958: N/A

TAGS: [FAIR](#) [ECON](#) [GR](#) [BATA](#)

SUBJECT: UNDER EC PRESSURE, GREEKS DECLARE INTENT TO
ABROGATE 1991 BILATERAL AIR TRANSPORT AGREEMENT

1. This is an action request. Please see paragraph 6.

2. (U) Summary: On April 28, DCM met with MFA Director General for Economic Affairs Chrysanthopoulos at his request. Chrysanthopoulos informed DCM that Greece intends to abrogate its 1991 Bilateral Air Transport Agreement (BATA) with the U.S. by May 18th, in order to avoid being taken to the European Court of Justice (ECJ) for violations of EU law. Chrysanthopoulos proposed that the US and Greece continue the substance of the 1991 BATA on a de facto basis, however, until such time as Washington and Brussels can agree on language regarding BATAs. Chrysanthopoulos provided a non-paper, the text of which follows in para 7, and sought U.S. reaction. End Summary.

3. (U) DCM met with MFA Director General for Economic Affairs Chrysanthopoulos on April 28, to discuss the US-Greek BATA of 1991. Chrysanthopoulos announced that Greece had received a Reasoned Opinion from the EC on March 22nd, informing Greece that its BATA violates Article 43 of the European Communities Treaty concerning the principle of non-discrimination, as well as European Regulation 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries. As a result, Chrysanthopoulos said Greece intends to abrogate the BATA before May 18th of this year. (Note: Although the Agreement will lapse on July 31 unless renewed by the two sides, according to Chrysanthopoulos, Greece must reply to the Reasoned Opinion by May 18th, and the reply must include the statement that the BATA has been abrogated. Failure to reply, or to have abrogated the BATA, will cause the Commission to initiate the ECJ case. End note.)

4. (U) Chrysanthopoulos proposed, however, that even as Greece abrogates the BATA, all provisions and annex of the Agreement should continue to apply on a de facto basis and on the principle of reciprocity. Also, Greece proposes to initiate a negotiation of a new Agreement, per EU regulation 847/2004. DCM informed Chrysanthopoulos that he would transmit the Greek message and proposal to Washington and seek guidance.

5. (U) Comment: Post understands that this decision was taken after a GoG interagency meeting on the 25th of April, during which it was decided that Greece could not risk irritating the EC further on this issue. (Note: The EC warned Greece last year not to renew the BATA, which the GoG chose to ignore in light of the impending Olympic Games and the desire to avoid any disruption to air services. End note.) The Greeks were not clear if they were the only country to receive this Reasoned Opinion at this time, or if other EU states had also been instructed to abrogate their BATAs at this time as well. End comment.

6. (U) Action request: Post requests guidance to respond to the GoG regarding its intention to abrogate the BATA, to continue to implement its provision on a de facto basis, and to begin negotiations for a new BATA under EU regulation 847/2004.

7. (U) Begin text of non-paper:

On 31/7/1991 the Hellenic Republic and the USA signed an Air Transport Agreement with annex ('the Agreement'), which expired five years after the date of signature, on 31/7/1996. Since, the Agreement has been extended each year, for one additional year. The last extension of the Agreement, till July 31 2005, was done through exchange of Notes on July 19th 2004.

On 5/11/2002 the European Court of Justice ruled in the cases brought against eight Member States concerning their bilateral air services agreements with the USA. Greece was not one of those Member States, nevertheless in the light of these judgements, the Commission issued a Communication, requesting all Member States to activate the provisions of denunciation contained in their bilateral agreements with the USA, in order to ensure compliance with Community law. It also urged the Council to agree a mandate for negotiations to replace the existing bilateral agreements with the USA with an agreement at community level. On 5/6/2003 the Transport Council issued such a mandate, subsequently the Commission

started negotiations, which are not yet concluded.

On 22/3/2005 Greece received a reasoned opinion by the European Commission, according to which, by extending the above mentioned Agreement:

1. Greece violated Article 43 of the European Communities Treaty, concerning the principle of non-discrimination, including the right of establishment. Consequently, where the bilateral Agreement (Article 3 and Article 4) contains designation provisions which discriminate between community carriers (sic) on the ground of nationality, they should have been replaced.

2. Greece violated the European Regulation 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries (Article 1.1 and 1.2 concerning the procedure of notification to the Commission of the intention of the Member state to enter into negotiation with a third country and Article 4.1 and 4.4 concerning the authorization issued by the Commission on the application of the bilateral agreement).

Taking into consideration Greece's legal obligation as a E.U. Member State but also its wish to continue applying the existing international air transport system between our respective countries, the U.S. Embassy is kindly requested to examine the following proposal:

1. The Agreement, would be denounced by the Greek side, before its expiration.

2. All the provisions and annex of the Agreement would continue to apply on a de facto basis (number of flights e.t.c. (sic)) and on the principle of reciprocity.

3. After the denunciation of the Agreement, Greece will initiate the procedure of negotiation of a new Agreement, foreseen in Regulation 847/2004.

Since Greece has to reply to the EU before the 18th of May, views of the U.S.A. would be appreciated as soon as possible.

Athens, 27th April 2005. End text of non-paper.
Ries